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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/535,352	11/22/2005	Volker Spiegel	117040.00087	7159

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EXAMINER
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MILLER, SAMANTHA A

ART UNIT	PAPER NUMBER
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3749

NOTIFICATION DATE	DELIVERY MODE
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03/08/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patents@hahnlaw.com  
akron-docket@hotmail.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/535,352	<b>Applicant(s)</b> SPIEGEL ET AL.	
	<b>Examiner</b> SAMANTHA A. MILLER	<b>Art Unit</b> 3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 10 December 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-14, 19 and 20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 and 19-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)         | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Amendment***

Receipt of applicant's amendment filed on 12/10/2009 is acknowledged.

### ***````Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 20 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The limitation of being "an unsealed room". Is not supported in the specification or drawings of this application. The specification in para.0008 says the room is moderately sealed, para.0022 says it is sufficiently sealed, and para.0053 says it is a satisfactory seal. Though it is talked about having an overpressure and leaks, no where does it say the room is unsealed.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 1-12 are rejected under 35 U.S.C. 102(b) as being anticipated by KOTLIAR (5,887,439).

KOTLIAR teaches:

Claim 1 Adding to the room (100) a nitrogen or a nitrogen-bearing (at 61, to create the hypoxic environment taking nitrogen from the ambient air described, col.2 ll.5-53), carbon dioxide-poor (system 64 removes any carbon dioxide to again create the hypoxic environment) gas mixture until the proportion of oxygen in the room air is less than 20.9% by volume (making it an hypoxic environment, col.2 ll.18-22) and the proportion of carbon dioxide of the room air is less than 1% by volume (it is removed by 64), and maintaining at least a slight overpressure in the room in relation to an outside atmosphere surrounding the room (col.7 ll.59-63).

Claim 2 Removing air from the room for reconditioning such that the room air is passed in a circulatory air mode (through 64 and 67 Fig.3).

Claim 3 A room air exchange (going through 60) caused by the circulatory air mode in the recreation room is so adjusted that a homogeneous atmosphere prevails in the recreation room.

Claim 4 A proportion of carbon dioxide of the room air is replaced in the circulatory air mode by replacement of a proportion of the room air by carbon dioxide-poor air of the outside atmosphere with a normal proportion of oxygen (the ambient air that is introduced into 57), wherein the proportion of the room air exchanged in the circulatory air mode is so adjusted that the room air maintains a concentration of carbon

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dioxide below fixed limit values of up to 0.65% by volume (64 removes the carbon dioxide to be breathable air which is 0.038% by volume of carbon dioxide).

Claim 5 Chemically reducing the proportion of carbon dioxide in the circulatory air (64, by using membrane separation it reduces the chemical composition of carbon dioxide).

Claim 6 Treating the room air which is passed in the circulatory air mode as required by regulated ionization in such a way that the room air with a low carbon dioxide content and a reduced proportion of oxygen in relation to the outside atmosphere (the hypoxic environment) maintains an air quality (by 67) which does not differ substantially from the quality of the outside atmosphere over a plurality of circulatory air cycles (Fig.3).

Claim 7 Supplementing the room air by mixing the room air with the gas mixture at an overpressure or a reduced pressure (col.7 ll.59-63).

Claim 8 Supplementing the room air by mixing the room air with the gas mixture is performed in a mixing chamber to which the components of the gas mixture to be mixed are fed at an increased pressure or a reduced pressure in dependence on the desired gas mixture of the mixing chamber (for example the valves 118, col.7 ll.59-63 and col.9 ll.20-26).

Claim 9 The gas mixture is mixed from air of the outside atmosphere and nitrogen (can use the air separator 107 which gas mixture coming in 110 is mixed with outside atmosphere from 108 and nitrogen coming from 111).

Claim 10 The step of measuring and adjusting at least one of the properties of the circulatory air such as air humidity, air temperature or the like in a regulated fashion (at 64 and 67).

Claim 11 The nitrogen-bearing gas mixture is produced by air separation of air (by using the separator 107, col.8 ll.36-52) provided from the room air by means of a separation installation (Fig.6).

Claim 12 The nitrogen-bearing gas mixture is produced by air separation of ambient air (all of the separators provided, col.2 ll.18-22).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13-14 and 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over KOTLIAR (5,887,439) in view of CHOI (KR0110271) using ( US 6,427,484) as an English translation.

KOTLIAR teaches the invention as discussed above and further teaches:

Claim 13 An oxygen-enriched gas mixture (exhausted from any of the separators taught, example at 71 or 109) having a proportion of oxygen of more than 21% by volume is produced in the air separation operation (being oxygen enriched air and in ambient air has 21% oxygen) and is added to outside of the room (100).

KOTLIAR teaches the invention above, however KOTLIAR does not teach connected the outlet of the air separator to a second room.

CHOI teaches:

13. A proportion of oxygen of more than 21% by volume is produced in the air separation operation (being oxygen enriched air and in ambient air has 21% oxygen) and is added to a second room (through pipe 304) so that the room air in the second room has an oxygen content which is increased in relation to the ambient air (col.3 ll.14-29).

14. The room air with the increased oxygen content in the second room is treated (col.3 ll.50-57).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to connect the outlet of the air separator in KOTLIAR to the room in CHOI in order to prevent breathing difficulties, headaches, or weakening of memory (CHOI, col.1 ll.13-17).

Regarding claims 19-20, refer to the rejection of claims 1-14.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-14 and 19-20 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR '1.136(a). A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samantha A. Miller whose telephone number is 571-272-9967. The examiner can normally be reached on Monday - Thursday 8:00 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steve McAllister can be reached on 571-272-6785. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should



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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Samantha Miller  
Examiner  
Art Unit 3749  
2/26/2010

/Steven B. McAllister/

Supervisory Patent Examiner, Art Unit 3749